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Supreme Court, U.S.
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In The

Supreme Court of the United States

DAVID K. EVERSON and PATRICIA M. EVERSON,

Petitioners,

v.

RICHARD L. DOUGHTON, Individually and In His Official Capacity as Justice of the Superior Court of Allegany/Rockingham County, North Carolina,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does judicial immunity apply when a judge forces defendants to an action to convey their land through an order for specific performance of a void contract by law, and the land in question was not legally owned by the defendants forced to convey at all material times to the action, the legal owners of the land in dispute were not joined in the action and were the indispensable party necessary to confer jurisdiction of the matter before the court thereby violating the Petitioners' due process rights.

2. Whether a judge depriving individuals of their real property ownership in the clear absence of jurisdiction constitutes substantive and procedural due process deprivation under the Fourteenth Amendment to the U.S. Constitution.

3. Whether a judge violates the Due Process Clause of the U.S. Constitution by entering an order that is biased and partial to statutory laws and facts in the matter before him, thereby depriving an individual of the fundamental right to property ownership.

PARTIES TO THE PROCEEDING

Pursuant to Rule 41.1(b), the caption contains the names of all the parties to the proceeding below.

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PETITION FOR WRIT OF CERTIORARI

David K. Everson and Patricia M. Everson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is reported at No. 07-1846 (4th Cir. 2008) and is found in the Appendix to the Petition ("App.") at App. A.

The Order of the Court of Appeals (4th Cir.) denying the Petition for Rehearing *En Banc* is found at App. E.

The District Court's order and judgment is not reported and is found at App. B and C.

The District Court Magistrate's Recommendation is not reported and is found at App. D.

JURISDICTION

The Court of Appeals entered its judgment on January 23, 2008. Petition for rehearing was denied on February 26, 2008 (App. E).

This Court has jurisdiction under 28 U.S.C. § 1254(1).

TEXT OF CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES, RULES OF PROCEDURE AND REGULATIONS INVOLVED

This case concerns violations of Section 1 of the Fourteenth Amendment to the U.S. Constitution which provides in relevant part, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

a. **Judicial relief U.S. Code 42 § 1983.** Any person who under color of any statute, ordinance, regulation, custom, or usage, or any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that for any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . .

b. **Eleventh Amendment.** The Eleventh Amendment does not bar suits seeking damages from government officials in their individual capacities. *Hafer v. Melo*, 502 U.S. 21 (1991). We hold that state officials, sued in their individual capacities are "persons" within the meaning of 1983. The Eleventh Amendment does not bar such suits, nor are state officers absolutely immune from personal liability under 1983 solely by virtue of the "official" nature of their acts. [*Hafer*, 502 U.S. at 30].

c. **Article III § 2 Jurisdiction.** Extends jurisdiction to cases arising under the U.S. Constitution.

***Rooker-Feldman* Doctrine:**

Under *Feldman*, the relevant question is whether the relief sought by the federal plaintiff is actually challenging a prior adjudication. *See Feldman*, 460 U.S. at 483-84 (considering "[t]he difference between seeking review in a federal district court of a state court's final judgment in a bar admission matter and challenging the validity of a state bar admission rule"); *Noel*, 341 F.3d at 1163 ("it is forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in a federal district court complains of a legal wrong allegedly committed by the state court and seeks relief from the judgment of that court."). *See also Loubser v. Thacker*, 440 F.3d 439 (7th Cir. 2006) for similar fact pattern in a 42 U.S.C. § 1983 action ruling *Rooker-Feldman* inapplicable.

Rule 8 of the Federal Rules of Civil Procedure provides in pertinent part:

> (a) **Claims for Relief.** A pleading which sets forth a claim for relief . . . shall contain. . .
>
> (2) a short plain statement of the claim showing the pleader is entitled to relief. . . .
>
> (b) **Defenses; Forms of Denials.** A party shall state in short and plain terms the party's defenses to each claim asserted, and shall admit or deny the averments upon which the adverse party relies.
>
> (c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively . . . any . . . matter constituting an avoidance or an affirmative defense. * * *

Rule 12 of the Federal Rules of Civil Procedure provides in pertinent part:

> (a) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (1) lack of subject matter jurisdiction. . . * * * (6) failure to state a claim upon which relief can be granted. . . . * * *
>
> (b) **Rule 12(b)(1) Dismissal.** If a plaintiff has pleaded a federal cause of action, it cannot be dismissed under Fed. R. Civ. P. 12(b)(1) unless the facts as pleaded are "so implausible, patently without merit, or insubstantial that they fail[ ]

for jurisdictional purposes." *Trimble v. Asarco, Inc.*, 232 F.3d 946, 953 (8th Cir. 2002).

STATEMENT OF THE CASE

This case concerns substantive and procedural due process deprivation by a state court judge deciding a matter concerning claims of breach of contract for real property in the absence of jurisdiction, the indispensable party not joined in the action nor noticed thereof, the state court plaintiffs lacking standing to bring the claim of breach of contract, and the state court judge ultimately entering an order for specific performance of a contract void *ab initio* resulting in the petitioners being forced to convey their land to the state court plaintiffs thereby being deprived of their due process rights under the Fourteenth Amendment of the U.S. Constitution.

Petitioners, David K. Everson and Patricia M. Everson filed a 42 U.S.C. § 1983, Article III § 2 suit against Respondent, Richard L. Doughton, Superior Court Justice, for claims he forced the Eversons to convey their land in the clear absence of all jurisdiction and by demonstrating gross partiality and prejudice. The U.S. District Court dismissed the complaint under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) finding Doughton was protected by absolute judicial immunity, and the claim was barred by the Eleventh Amendment and the *Rooker-Feldman* Doctrine. App. B and C. The Fourth Circuit affirmed

by unpublished opinion. App. A. Petitioners filed a Petition for Rehearing *En Banc*. The Fourth Circuit denied the petition. App. E.

A. The Course of Proceedings

On November 26, 2006, Petitioners, David K. Everson and Patricia M. Everson filed a complaint in the United States District Court of the Middle District of North Carolina against the Respondent, Richard L. Doughton, Superior Court Justice pursuant to 42 U.S.C. § 1983 and Article III § 2 for violations of certain protections guaranteed to the Eversons by the Fourteenth Amendment of the Federal Constitution, by Doughton under color of law in his official capacity and individually.

On January 03, 2007, Petitioners filed their amended complaint adding additional claims for relief. Doughton filed a motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)* and *12(b)(1)* for failure to state a claim upon which relief can be granted and for lack of jurisdiction.

The district court magistrate recommended granting Doughton's motion to dismiss. App. D. The district court adopted the magistrate's recommendation and dismissed the case. App. B and C. On appeal the Fourth Circuit affirmed the order and judgment by unpublished opinion. App. A. The Fourth Circuit's order is contrary to well-settled law as this Court has held as well as other Circuit Courts. The Fourth Circuit's unpublished opinion does not constitute

binding precedent. The Court of Appeals denied petitioners' Petition for Rehearing *En Banc* on February 26, 2008. App. E.

B. Statement of Facts

Because this case was decided on a motion under Federal Rule of Civil Procedure 12(b)(6) and 12(b)(1), this Statement recites the facts as alleged within the complaint, which must be taken as true for purposes of these proceedings, as they should have been in the courts below. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139, 2143 (1999) (citing *United States v. Gaubert*, 499 U.S. 315, 327 (1991)); *Davis v. Monroe County Board of Education*, 526 U.S. 629, 119 S. Ct. 1661, 1666 (1999).

Judge Doughton presided over a state court civil proceeding wherein the state court plaintiffs, Charles S. Honacher and wife, Catherine M. Honacher, (hereinafter referred to as the "Honachers") filed a complaint against the Petitioners herein David K. Everson and wife, Patricia M. Everson (hereinafter referred to as the "Eversons") alleging breach of contract of a document titled "*addendum*" in conjunction with other alleged claims. (*See* Pleading No. 6, Am. Compl., Ex. 4). The Honachers were represented by counsel at the trial that ensued in the matter, the Eversons were *pro se*. The "*addendum*" was purported to be the "*addendum*" to a contract for land between the Eversons and the legal owners of the land, John David Stanley, Jr., Elizabeth Stanley

Searce, and Alan B. Stanley (hereinafter referred to as the "Stanleys"). (*See* Pleading No. 6, Am. Compl., Ex. 1).

The crux of the entire case was the allegation by the Honachers they and the Eversons executed an "*addendum*" to the Everson/Stanley contract, and this "*addendum*" constituted an enforceable contract by law.[1] The fatal flaw of the Honachers' claims was the Stanleys never executed any "*addendum*" to the Everson/Stanley contract, and as they were the party to be charged therewith pursuant to *N.C. Gen. Stat. § 22-2*, of which the Eversons pled as a bar to the Honachers' claim for breach of contract,[2] the Honachers lacked standing to bring the action, and the state court lacked jurisdiction to decide the matter[3] because

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[1] The Honachers admitted with their testimony at trial the "*addendum*" was not a legally binding enforceable contract by law.

[2] It was also proven at trial, the "*addendum*" violated *N.C. Gen. Stat. § 22-2* of which the Eversons pled as a bar to the Honachers' claims for breach of contract "*addendum.*"

[3] It was proven at trial through testimony and submitted evidence in order for the "*addendum*" to be enforceable by law the Stanleys would have had to execute the document thereby agreeing to its terms and conditions because they were the legal, lawful owners of the subject property, thereby the party to be charged therewith, establishing by law they were an indispensable party to the action, and the Everson/Stanley contract contained termed conditions concerning any changes, deletions, or additions to the contract which required the Stanleys' written consent of which never existed.

the Stanleys were the indispensable party and they were never joined as a party to the action.

The Honachers' complaint contained allegations the document "*addendum*" "contemplated" the Eversons would exercise their right of first refusal on the Stanley property for the benefit of the Honachers. (*See* Pleading No. 6, Am. Compl., Ex. 4, ¶¶ 23-28). However, it was proven by the Honachers testimonies and evidence this allegation was purely erroneous. On its face the "*addendum*" fails to state a right of first refusal (*See* Pleading No. 6, Am. Compl., Ex. 1), and the Everson/Stanley contract contained a term condition in ¶ 18 setting forth the following:

> "This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then the contract shall be binding on the assignee and his heirs and successors."

(*See* Pleading No. 6, Am. Compl., Ex. 2, ¶ 18).

The Stanleys never agreed to any assignment of the Everson/Stanley contract as was proven at the trial. The Everson/Stanley contract contained another term condition in ¶ 21 which set forth the following:

> "This contract contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement

> between a REALTOR or broker and Seller or Buyer as contained in any listing agreement buyer agency agreement, or any other agency agreement between them."

(*See* Pleading No. 6, Am. Compl., Ex. 2, ¶ 21).

Within the Honachers' complaint, the description of the land in dispute, is only identified as being "the Stanley property." (*See* Pleading No. 6, Am. Compl., Ex. 4). The Stanley Deed description of the land as registered with Rockingham County Register of Deeds, North Carolina, is recorded in Book 830, Page 1292. App. F. The Eversons' General Warranty Deed is recorded in Book 1158, Page 2049, of the Rockingham County Register of Deeds. App. G. The Eversons did not own the land at all material times to the Honachers' complaint as pursuant to the Eversons' General Warranty Deed which was executed by the Stanleys and their prospective husband and wife on the dates of May 21, 2003, June 02, 2003 and June 03, 2003 (App. F) proves, thereby establishing by law, in order for the action to be heard and decided by a court of general jurisdiction, the Stanleys must be joined in the action, and noticed of the action, as they were the indispensable party who held an interest in the outcome.[4] *Chicago v. Atchison, T. & S.F.R. Co.*, 357 U.S. 77, 78 S. Ct. 1063 (1958).

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[4] The Honachers admitted with their testimony at trial the Stanleys were the lawful owners of the land and admitted further they did not name them as defendants in the action

(Continued on following page)

The Honachers admitted with their testimonies the Stanleys never signed any document agreeing to convey their land to the Honachers, nor did their lawful authorized agent. They admitted the "*addendum*" was not a binding, enforceable contract by law, and admitted the Stanleys never signed any document agreeing to a conveyance of their land to the Honachers by any means. (*See* Pleading No. 6, Am. Compl., Ex. 3, 5, 6, 7).

Judge Doughton's Issue One to the jury was:

> "Did the plaintiffs and defendants enter into a contract dated, April 21, 2003 for the purchase and sale of 58.71 acres of land described in Deed Book 830, Page 1292, of the Rockingham County Registry."

(*See* Pleading No. 6, Am. Compl., Ex. 8).

The Deed reference within Issue One above is that of the Stanleys' land and Deed, and the question concerns the Eversons and Honachers entering into a contract to sell and purchase the Stanleys' land without the consent of the Stanleys. The document purported to be a contract titled "*addendum*" did not contain a description of the land, a price, a seller, or any consideration and grossly violates *N.C. Gen. Stat. § 22-2.*

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because their argument was not with the Stanleys but the Eversons.

With all the prima facie evidence before Doughton, it was glaringly apparent he demonstrated gross partiality and prejudice to the facts and law in the matter. It was also apparent he lacked jurisdiction to decide the claim for breach of contract and specific performance as it was factually proven the Eversons did not own the land, the subject of the dispute.

The Eversons' complaint against Doughton contained facts well proven by submitted competent evidence which included court reporter transcripts of testimony and hearings. Also included were copies of the Stanleys' Deed and Eversons' Deed as well as the document *"addendum"* which all served as proof the claims alleged by the Eversons were of merit and justiciable that Doughton lacked jurisdiction to determine the matter, demonstrated gross partiality and prejudice, and did not follow the law as written and defined regarding contracts for the conveyance of land in North Carolina thereby violating the Eversons' Constitutional rights.

The Eversons named Doughton in his individual capacity and in his official capacity.

Doughton filed a motion to dismiss on February 01, 2007, as his answer to the complaint pursuant to *Fed. R. Civ. P. 12(b)(1)* and *12(b)(6)* citing as a bar to the Eversons claims absolute judicial immunity, the Eleventh Amendment and the *Rooker-Feldman* Doctrine.

The Eversons timely filed their opposition and memorandum to Doughton's motion to dismiss on

February 12, 2007 citing case law *Hafer v. Melo*, 502 U.S. 21, 28 (1999) (in 1871 Congress enacted § 1983 "to Enforce Provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it"), quoting *Scheuer v. Rhodes*, 416 U.S. 232, 243 (1974); quoting *Monroe v. Pape*, 365 U.S. 167, 171-72 (1961), and citing *Lugar v. Edmonson Oil Co.*, 457 U.S. 922 (1982). Eversons presented argument Doughton acted completely partial, lacked jurisdiction in that a person cannot legally convey the land owned by another without the land owners lawful consent or lawful authorization, and a contract for real property will not be enforced unless it meets the prerequisite requirements of *N.C. Gen. Stat. § 22-2* one of which is a description of the land, the subject matter thereof, either certain in itself, or capable of being rendered to certainty by reference to something extrinsic to which the deed, contract, or memorandum refers." *Carlton v. Anderson*, 276 N.C. 564, 173 S.E.2d 783 (1970). It was absolute fact the document alleged to be a contract for the land by law titled "*addendum*" did not contain any description of the land nor anything extrinsic of which it could be rendered to certainty. (*See* Pleading No. 6, Am. Compl., Ex. 1).

Further, the Eversons argued the Honachers lacked standing to bring their claim for breach of contract because the Stanleys never executed any document with the Honachers agreeing to convey their land to them establishing Doughton lacked

jurisdiction to decide the matter. *Estate of Apple v. Commercial Courier Express, Inc.*, 359 N.C. 632, 613 S.E.2d 688 (2005).

On April 18, 2007, the district court Magistrate recommended Doughton's motion to dismiss finding the Eversons claims to be "utterly remote from 'clear absence of all jurisdiction' required for a forfeiture of judicial immunity." The Magistrate continued to state, "to the extent Plaintiffs ask for declaratory judgment, they essentially ask this Court to sit as a court of error with respect to a state court civil trial. This notion reveals a fundamental misunderstanding of the relationship between the federal and state court." "Plaintiffs' action against Judge Doughton in his official capacity fares no better. Such an action is in essence an action against the State of North Carolina. However, the Eleventh Amendment generally bars suits directly against states or its agencies, regardless of the nature of the relief sought."

The Eversons were not asking the district court to sit as a court of error with respect to a state court trial because the Eversons had exhausted all state court remedies. The N.C. Court of Appeals dismissed the Eversons' appeal citing lack of jurisdiction within the Eversons' notice of appeal. The N.C. Supreme Court denied the Eversons' petition for writ of certiorari without any opinion. The only avenue left for the Eversons to pursue was suing Doughton in the federal court because he violated substantial and fundamental rights of the Eversons under the U.S. Constitution.

The Eversons timely filed their objections to the Magistrate's recommendation on April 30, 2007, arguing "qualified immunity serves as a defense to § 1983 claims for government officials 'insofar' as their conduct does not violate clearly established statutory or constitutional rights which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). "The relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Wilson v. Layne*, 526 U.S. 603, 615 (1999).

In the case at bar, the Eversons showed unto the court Doughton's actions were unlawful and clearly violated the Eversons' Constitutional rights in that he ruled completely contrary to *N.C. Gen. Stat. § 22-2*, well-settled law, and in the clear absence of jurisdiction.

Chief Judge Beaty adopted and affirmed the Magistrate's recommendation granting Doughton's motion to dismiss.

The Eversons timely filed a motion for new trial which was denied on August 10, 2007. Eversons timely filed their Notice of Appeal with the U.S. Court of Appeals for the Fourth Circuit on August 28, 2007.

The Eversons argued within their appeal brief Doughton lacked jurisdiction to determine the state court matter because they were not the lawful owners of the land at all material times to the Honachers'

complaint; the Stanleys were required to be joined in the action and noticed of the action as the issues concerned their land; the "*addendum*" violated *N.C. Gen. Stat. § 22-2*, did not contain any description of the land, no price, no seller, no consideration; specific performance was impossible to perform by law and fact; the Honachers lacked standing to bring the action; Doughton demonstrated gross partiality and prejudice and failed to follow the law. Based on all of the above facts, statutory authority and law, Eversons argued Doughton violated their Constitutional rights and law thereby establishing the Eleventh Amendment does not bar their damage claims, the *Rooker-Feldman* Doctrine does not bar their claims, and they presented a meritorious, justiciable claim by law against Doughton and the district court's order and judgment should be vacated or reversed by law.

The Fourth Circuit affirmed Judge Beaty's judgment granting dismissal to Doughton in an unpublished opinion. The Fourth Circuit did acknowledge that the Eversons' correctly noted that the Eleventh Amendment does not bar suits seeking damages from government officials in their individual capacities citing *S.C. State Ports Auth. v. Fed. Mar. Comm'n*, 243 F.3d 165, 170 (4th Cir. 2001). They went on to state this principle does not aid the Eversons because the only conduct the Eversons challenge is Doughton's disposition of state court proceedings finding the district court dismissing the case citing the Eversons' claims are barred by the Eleventh Amendment is appropriate. Such a ruling is purely erroneous in that

the Eversons' claims against Doughton set forth and proved with competent evidence Doughton determined an action in the clear absence of all jurisdiction, violated law and statutory authority, and demonstrated gross partiality thereby violating the Eversons' Constitutional rights. The evidence was overwhelming in support of the Eversons' claims and this case is one in which a superior court judge usurped the law, and demonstrated partiality to the Eversons when he knew it is his duty to follow the law, and chose to force the Eversons to convey their land to the Honachers when at all times he was fully cognizant the facts and law proved he lacked jurisdiction to determine the matter and specific performance was impossible to perform. The courts cannot offer protection to a judge who clearly violates the law and substantive due process under the Fourteenth Amendment to the U.S. Constitution and lacks jurisdiction to decide the matter before him as Judge Doughton did in the case at bar.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS WRONG IN RESPECT TO JUDICIAL IMMUNITY, DEPRIVATION OF DUE PROCESS IN REGARDS TO REAL PROPERTY OWNERSHIP, AND FEDERAL RULE OF CIVIL PROCEDURE 8 REQUIREMENTS.

Review is warranted because the ruling below is wrong on the merits. The Court of Appeals found the

Eversons' complaint against Doughton fails because the Eversons' only assertion is that Doughton wrongly decided a state court action and as a judge on the state superior court, Doughton had authority to consider that action and he is immune from suits arising from those acts. The Court of Appeals erred in (A) finding the only assertions by the Eversons is Doughton wrongly decided the state court action; (B) Doughton had authority to consider the state court action; and (C) Doughton is immune from suits arising from those acts. Each error independently requires reversal.

Petitioners allege Judge Doughton did not satisfy the two-prong test this Court has established is necessary for a judge to be granted judicial immunity which are:

1) Does the court have subject matter jurisdiction; and

2) Is the act a judicial act.

Judge Doughton violated the Eversons' Fourteenth Amendment rights by forcing the Eversons to convey their land through an order for specific performance thereof, in the absence of jurisdiction for the following reasons as clearly stated and alleged within their complaint:

1) the legal, lawful, owners of the land in dispute were not joined in the action and it was a requirement by law, for they were the indispensable party;

2) the legal, lawful, owners of the land in dispute never executed any document agreeing or otherwise, to convey their land to the state court plaintiffs;

3) the document purported to be a contract by law for the conveyance of land titled, *"addendum"*, was void *ab initio* in that it failed to contain any of the necessary prerequisites pursuant to *N.C. Gen. Stat. § 22-2*; and

4) the state court plaintiffs lacked standing to bring the claim for breach of contract, *"addendum."*

The above establishes Judge Doughton acted in the absence of jurisdiction, thereby establishing the Eversons did not appear before a judge performing his usual functions, but appeared before an individual who deprived the Eversons of their due process rights under the Fourteenth Amendment to the U.S. Constitution. The Court of Appeals could not have found the Eversons' only assertions against Doughton was he wrongly decided a state court action based on the factual allegations alleged and the claims for relief within the complaint. Further, Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to include "(1) a short plain statement of the grounds upon which the court's jurisdiction depends. . . (2) a short plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." *Fed. R. Civ. P. 8(a).*

This Court has reaffirmed that Rule 8(a)'s "simplified notice pleading standard" merely requires a statement that "give[s] the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). "[T]his notice function . . . represents the very core of the pleading process under the federal rules." *5 Charles Allen Wright and Arthur R. Miller, Federal Practice and Procedure*: Civil 3d § 1215, at 173-74 (3d ed. 2004).

Under the notice pleading standards of Rule 8, the "long-standing practice is to construe pro se pleadings liberally," *Hill v. Braxton*, 277 F.3d 701, 707 (4th Cir. 2002). This Court has held that pro se litigants "are held to a lesser pleading standard than other parties." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). (Pro se pleadings are to be liberally construed).

This Court has held:

> Rule 8(f) provides that "[all] pleadings shall be so construed as to do substantial justice." "We frequently have stated that pro se pleadings are to be given a liberal construction. *E.g. Haines v. Kerner*, 404 U.S. 519 (1972). If these pronouncements have any meaning, they must protect the pro se litigant who simply does not properly denominate her motion or pleading in the terms used in the Federal Rules."

A. The Fourth Circuit's Decision conflicts with the decisions of other United States Courts of Appeals and This Court as to Judicial Immunity.

The Fourth Circuit's decision directly conflicts with relevant decisions of this Court concerning a judge deciding a case in the clear absence of all jurisdiction. In the case at bar, Judge Doughton acted in the clear absence of all jurisdiction, therefore judicial immunity cannot apply as to Doughton. *See Bradley v. Fisher*, 13 Wall. 335, 351 (1872); *Stump v. Sparkman*, 435 U.S. at 357.

This Court has stated:

> "In determining whether an action is "judicial", we consider the nature of the act and whether it is a "function normally performed by a judge." *Stump v. Sparkman*, 435 U.S. at 362.

In the case *Rankin v. Howard*, 633 F.2d 844 (1980) this Court has stated:

> "When a judge knows he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicially immunity is lost. *Id.*

Doughton knew he lacked jurisdiction to decide the case at bar based on all evidence, testimony, and facts before him. This case is one in which a trial court judge usurped the law, entered a partial ruling in violation of statutory law thereby depriving the Eversons of due process by forcing them to convey their land when the action before Doughton did not

concern the Eversons' land but individuals who were not joined in the action nor noticed of the action and were the indispensable party as the complaint itself of the state court plaintiffs serves as proof as well as the description of the land the subject of the state court dispute. (*See* Pleading No. 6, Am. Compl., Ex. 4, ¶ 8, ¶ 12, ¶¶ 23-28).

Doughton acted with no discretion in the matter because he acted absent all jurisdiction and discretion is incident to jurisdiction. *See Piper v. Pearson*, 2 Gray 120 (Mass. 1854), cited in *Bradley v. Fisher*, supra.

A very important factor in the present case is the Stanleys were never noticed of the action concerning their property nor joined in the action. One element of the fact Doughton did not acquire jurisdiction to hear the matter is it was necessary and required the Stanleys receive notice and be joined as parties to the action because they held a "direct and substantial personal interest in the outcome" for it was legally their land in dispute establishing they were the indispensable party to the action, and given the fact it was their land of which the state court controversy concerned, they were not afforded the opportunity to be heard, for they were never noticed of the action nor joined in the action. *See Boddie v. Connecticut*, 104 U.S. 371, 380 (1971) where this Court held:

> "Early in our jurisprudence, this Court voiced the doctrine that "[w]henever one is assailed in his person or his property, there

he may defend," *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). Although, "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in *Mulane v. Central Hanover Tr. Co.*, 399 U.S. 306 (1950), "there can be no doubt that, at a minimum, they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity or hearing appropriate to the nature of the case." *id.* 399 U.S. at 313.

This Court has stated:

"An indispensable party is one who not only has an interest in the controversy but an interest of such a nature that a final decree cannot be made without either effecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." *Gaw v. Higham*, 267 F.2d 355, 357 (6th Cir. 1959), cert. denied, 360 U.S. 933, 79 S. Ct. 1453, 3 L. Ed. 2d 1546.

In the case *Consolidated Water Co. v. City of San Diego,* 93 F. 849, 35 C.C.A. 631 (C.C.A.9 (Cal.) Feb. 06, 1899) (No. 460), suit was instituted by the mortgagee of a water company to enjoin the enforcement, fixing the rate for water furnished by it, on the ground that the rates were so unreasonably low as to amount to a taking of the company's property embraced in the mortgage without due process of law. It was held that, as the trial of the suit would

necessarily involve the management and conduct of the company's affairs and an adjudication of its rights, it was an indispensable party.

The present case involves the disposition of land and a contract for the sale and purchase thereof without the actual legal owners being a party to the action. It goes without saying that in order for Doughton to make any determination of the matter it was necessary for the Stanleys to be joined in the action for all jurisdictional purposes for they were the indispensable parties for as to them, failure to join defeated jurisdiction absolutely, and Doughton had no discretion in the matter. *Id.*

Further, Doughton's acts were not authorized by North Carolina Statute § 22-2 in that the "*addendum*" purported to be a contract for the Stanley land grossly violated § 22-2 for several reasons but one in particular, it failed to confer jurisdiction, that being, the Stanleys' signatures and names upon and within the document itself for they were the party to be charged therewith. *See N.C. Gen. Stat. § 22-2.* (*See* also, Pleading No. 6, Am. Compl., Ex. 1).

In the case *Ferris v. Wilbur*, 27 F.2d 262, 264 (4th Cir. 1928), in an opinion by Judge Parker the court held:

> "Where the act complained of is not authorized by statute, or where the statute authorizing is void because in conflict with some provision of the Constitution, the person attempting it may be restrained in a proper

> case, notwithstanding his claim that he is acting in his official capacity. In such case he is acting, not within the law, but outside it, his act is not the act of government, and the law affords him no protection for what he is doing or is about to do." *Id.*

Likewise, in the case *Stroud v. Benson*, 254 F.2d 488 (4th Cir. 1958), the Court there found because an indispensable party to the action was not joined, the district court lacked jurisdiction to determine the matter and vacated the orders and judgment in the case.

> The North Carolina Supreme Court has held:
>
> "It is axiomatic, at least in America jurisprudence, that a judgment rendered by a court against a citizen affecting his vested rights in an action or proceeding to which he is not party is absolutely void and may be treated as a nulity whenever it is brought to the attention of the court." *Card v. Finch*, 142 N.C. 153, 88 S.E. 1009, 1010 (1906); *Johnson v. Whilden*, 171 N.C. 153, 88 S.E. 223 (1916); *Flowers v. King*, 145 N.C. 234, 58 S.E. 1074 (1907); *Rackley v. Roberts*, 147 N.C. 201, 60 S.E. 975 (1908).
>
> "A void judgment, however, binds no one. Its validity may be asserted at anytime and in any action, where some benefit or right is asserted thereunder. A judgment is void if the court rendering it does not have jurisdiction either of the asserted cause of action or of the parties." *Moore v. Humphrey*, 247 N.C. 243

> (1958); *Mills v. Richardson*, 240 N.C. 187 (1954); *Powell v. Turpin*, 224 N.C. 67, 29 S.E.2d (1944); *Dunn v. Wilson*, 210 N.C. 493, 187 S.E. 802 (1936); *Clark v. Carolina Homes*, 189 N.C. 703, 128 S.E. 20 (1925); *Carter v. Roundtree*, 109 N.C. 29 (1891).

It is also fact, the state court plaintiffs, [Honachers], lacked standing to bring the action in that the Honachers were never a party to the Everson/Stanley contract, and never provided any consideration thereof. They could not prove by fact or law any personal injury or they held a personal stake in the dispute to render judicial resolution appropriately. The Eversons sufficiently with competent evidence proved this fact to the Fourth Circuit, of which, they overlooked. The evidence before the Fourth Circuit as proof the Honachers lacked standing to bring the action was their very own testimonies at trial admitting they were never a party to the Everson/Stanley contract; the Stanleys never executed any document with the Honachers; they did not provide consideration; and the Stanleys were the legal owners of the land as the Stanley Deed served prima facie. (*See* Pleading No. 6, Am. Compl., Ex. 3, 5, 6, 7, 8).

This Court has stated concerning a plaintiff's standing as follows:

> "The threshold requirement of standing is 'perhaps the most important' condition of justiciability. *Allen v. Wright,* 468 U.S. 737, 750 (1984). The standing inquiry ensures that a plaintiff has a sufficient personal

stake in a dispute to render judicial resolution appropriate. *Id.* at 750-751. The standing requirement also "tends to assure that the legal questions presented to the court will be resolved, not in the rarefied atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982).

To meet the conditional minimum for standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen*, 468 U.S. at 751. This formula includes three elements: (1) injury in fact; (2) traceability; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

The injury-in-fact prong requires that a plaintiff suffer an invasion of a legally protected interest which is concrete and particularized, as well as actual or imminent. *See id.* at 560. The traceability prong means it must be likely that the injury was caused by the conduct complained of and not by the independent action of some third party not before the court. *See id.* Finally, the redressability prong entails that it must be likely, and not merely speculative, that a favorable decision will remedy the injury. *See id.* at 561.

It goes without saying, the kind of claim asserted by the Honachers in the state court action should have been self evident to Doughton being that of breach of contract which is readily recognizable as the kind of claim that they could not press in a court of law for it did not satisfy the provisions of *N.C. Gen. Stat. § 22-2* thereby entitling them to specific performance. Doughton was fully aware the claims alleged by the Honachers for breach of contract were claims they lacked standing to bring for they were not entitled to adjudication for the claim of breach of contract as it did not satisfy the *ipso facto* statutory requirement as set forth by § 22-2. Further, the fact they themselves admitted the Stanleys never executed any document with the Honachers, informed Doughton the indispensable parties, being the Stanleys, must be joined in the action in order for jurisdiction to be invoked.

The courts below failed to follow the law as to judicial immunity of a judge who acts in the clear absence of all jurisdiction. The courts below could not determine the Eversons' only assertion was Doughton wrongly decided the state court matter based on their filed complaint and amended complaint against Doughton. Such a finding is purely erroneous and for the sole benefit of Doughton, which is a manifest injustice in this case. Certiorari should be granted because the Eversons' Constitutional rights under the Fourteenth Amendment have been violated by the wrongful deprivation of their property by a state court judge acting in the absence of jurisdiction to

determine the matter and in violation of well-settled law as stated above.

B. The Court of Appeals Findings Conflict in that this Court and the Third Circuit Have Held When a Judge Lacks Jurisdiction to Decide A Matter Substantive Due Process Has Been Deprived When the Issue Concerns Real Property Ownership.

In the case at bar, Judge Doughton forced the Eversons to convey their land in the absence of subject matter jurisdiction, rendering Doughton's judgment as to the claims for breach of contract and specific performance void *ab initio*, thus, violating the Eversons due process rights. *See Int'l Longshoremen's Assn. v. Davis*, 476 U.S. 380, 392 (1986) (holding that where a "state court . . . ha[s] no subject matter jurisdiction to adjudicate the issue . . . any judgment issued by the state court will be void in *ab initio*").

Jurisdiction was invoked upon the district court in the case at bar by the Eversons 42 U.S.C. § 1983 substantive due process claim under the Fourteenth Amendment which guarantees individuals shall not be deprived of their property without due process of law. *See* U.S. Const. Amend. XIV, § 1; *see also John Corp.*, 214 F.3d at 577 ("Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, [] serves to prevent government power from being used for purposes of oppressions."

"A violation of substantive due process, for example, occurs only when the government deprives someone of liberty or property; or, to use the current jargon, only when the government works a deprivation of a constitutionally protected interest." *Brennan v. Stewart*, 834 F.2d 1248, 1257 (5th Cir. 1988).

"Substantive due process analysis is appropriate only in cases in which government arbitrarily abuses its power to deprive individuals of constitutionally protected rights. Therefore, recognizing that reliance on substantive due process must be taken with the 'utmost care.'" *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992).

Judge Doughton forced the Eversons to convey their land to the Honachers in clear violation of North Carolina Statutes (§ 22-2), in the absence of subject matter jurisdiction, and in violation of sufficiently fair and just legal procedures grossly lacking in appropriate governmental justification. Doughton was fully cognizant he lacked subject matter jurisdiction as he was informed the Stanleys were the legal owners of the land, not the Eversons. Doughton was also cognizant, the Stanleys did not execute the "*addendum*" nor any document with the Honachers, and the "*addendum*" violated *N.C. Gen. Stat. § 22-2*, yet he turned a blind eye and deaf ear regardless of law, and forced the Eversons to convey their land thereby violating their substantive due process rights at the very core of the Fourteenth Amendment guarantee.

As a limitation on Congress, the Due Process clause has been interpreted by this Court not only as a remedial requirement when other constitutional rights have been violated, but furthermore as having additional "procedural" and "substantive" components, meaning that the Clause purportedly imposes unenumerated restrictions on legal procedures – the ways in which laws may operate – and also on legal substance – what laws may attempt to do or prohibit.

The Third Circuit Court of Appeals has determined that real property "ownership is a property interest worthy of substantive due process protection." *See DeBlascio v. Zoning Bd. of Adjustment*, 53 F.3d 592, 600 (3d Cir. 1995). As one court has aptly observed, this is unquestionably "a fundamental property interest dating back to the foundation of the American colonies." *Homar*, 63 F. Supp. 2d at 577. "And as we concluded in *DeBlascio*, 'one would be hard-pressed to find a property interest more worthy of substantive due process protection than [land] ownership.'" 53 F.2d at 601.

Repeatedly, case law has revealed one guiding principle in federal courts determining whether certain property interest embodies the "particular quality" necessary for a substantive due process deprivation claim, and that principle is not determined by reference to state law, but rather depends on whether that interest is "fundamental" under the U.S. Constitution.

The Third Circuit has held, "That a non-legislative government deprivation 'that comports with procedural due process may still give rise to substantive due process claim "upon allegations that the government deliberately and arbitrarily abused its power."'" *Independent Enters., Inc. v. Pittsburgh Water and Sewer Auth.*, 103 F.3d 1165, 1179 (3d Cir. 1997) (quoting *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 683 (3d Cir. 1991)). "Accordingly, we have held that a property interest that falls within the ambit of substantive due process may not be taken away by the state for reasons that are 'arbitrary, irrational, or tainted by improper motive.'" *Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118, 123 (3d Cir. 2000) (quoting *Bello v. Walker*, 840 F.2d 1124, 1129 (3d Cir. 1988)), or by means of government conduct so egregious that it "shocks the conscience," *Boyanowski*, 2000 WL 768775, at *4 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

The Third Circuit defined cases in which a claim of non-legislative substantive due process deprivation falls in the case *Nicholas v. Pennsylvania State University*, 227 F.3d 133 (3d Cir. 2000) holding as follows:

> "To prevail on a non-legislative substantive due process claim, a plaintiff must establish as a threshold matter that he has a protected property interest to which the Fourteenth Amendment's due process protection applies." *Woodwind Estates*, 205 F.3d at 123. The text of the Fourteenth Amendment

> speaks of "property" without qualification, and it is well-settled that state-created property interests, including some contract rights, are entitled to protection under the procedural component of the Due Process Clause. *See Reich v. Beharry*, 883 F.2d 239, 243 (3d Cir. 1989).
>
> "Following Justice Powell, this Circuit has adopted an approach to substantive due process that focuses on the nature of the property interest at stake. By way of illustration, we have so far limited non-legislative substantive due process review to cases involving real property ownership. *See e.g. DeBlascio,* 53 F.3d at 600 ("[land] ownership is a property interest worthy of substantive due process protection").

As this Court has held, "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

This Court has held that the Due Process Clause of the U.S. Constitution also has a substantive component by holding:

> ("it is settled that the due process clause of the Fourteenth Amendment **10 applies to matters of substantive law as well as to matters of procedure") (quoting *Whitney v. California*, 274 U.S. 357, 373, 71 L. Ed. 1095, 47 S. Ct. 641 (1927) (Brandies, J., concurring)).

In the case at bar, Judge Doughton deprived the Eversons of their ownership of their property which said ownership was "fundamental" and the Eversons were entitled to, as the claim by the Honachers for breach of contract "*addendum*" was proven to concern not the Eversons property, but the Stanleys, and they were not joined as a party to the action, and Doughton lacked subject matter jurisdiction to determine the matter as the indispensable party, the Stanleys were required to be joined as a party defendant.

Certiorari should be granted because the Eversons proved they held a "fundamental" entitlement to the property and were deprived of that right under the Fourteenth Amendment of the U.S. Constitution thereby establishing Judge Doughton violated the Eversons substantive due process rights as stated above.

II. THIS COURT HAS HELD THAT WHEN A JUDGE'S DECISION IN A MATTER OFFENDS SOME PRINCIPLE OF JUSTICE SO ROOTED IN THE TRADITIONS AND CONSCIENCE OF OUR PEOPLE AS TO BE RANKED FUNDAMENTAL SUCH DECISIONS VIOLATE THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION.

This Court held in the case *Patterson v. New York*, 432 U.S. 197, 201, 202 (1977), "that it is normally within the power of the State to regulate procedures under which its laws are carried out . . . and

its decision in this regard is not subject to proscription under the Due Process Clause unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

The above holding applies to the case at bar in that Doughton's bias and prejudice demonstrated in the matter was the underlying cause of the Eversons loss of their fundamental right in the ownership of real property. Doughton turned a deaf ear and blind eye to the prima facie evidence before him as well-settled statutory authority, *N.C. Gen. Stat. § 22-2.*

Doughton heard the testimonies of the Honachers admitting the Stanleys never executed any document agreeing to convey their property to them (*See* Pleading No. 6, Am. Compl., Ex. 6-8); admitting the Everson/Stanley contract contained two (2) conditions that required all parties to the contract agree in writing to any changes or assignments, of which they did not (*See* Pleading No. 6, Am. Compl., Ex. 2); admitted the "*addendum*" was not a binding enforceable contract by law (*See* Pleading No. 6, Am. Compl., Ex. 7); admitted the earnest money deposit was returned to them by the Eversons' Realtor Dawn Stone (*See* Pleading No. 6, Am. Compl., Ex. 10); admitted there existed no other documents dated April 21, 2003 (*See* Pleading No. 6, Am. Compl., Ex. 10); and, admitted the legal owners of the land were the Stanleys (*See* Pleading No. 6, Am. Compl., Ex. 10).

It has been held, "[a] fair trial in a fair tribunal is a basic requirement of due process." *Callahan v. Campbell*, 427 F.3d 897, 928 (11th Cir. 2005) (quoting *In re Murchison*, 349 U.S. 133, 136-137, 75 S. Ct. 623, 625 (1955)).

In the present matter, it was clearly and convincingly established with competent evidence and testimony the Honachers had no standing to the bring the claim for breach of contract "*addendum*" nor ask the court for specific performance thereof. As stated above, Doughton was cognizant the claims could not be decided by the court for lack of subject matter jurisdiction as it would require the Stanleys being joined in the action.

Yet, Doughton forced the Eversons to convey their land to the Honachers in contravention of law, facts, and guarantees under the U.S. Constitution. The partiality and prejudice demonstrated by Doughton is glaringly apparent in this matter, and should certainly fall into the cases where this Court has determined such demonstrations of bias and prejudice by a judge constitute violations of the Due Process Clause.

The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. Amend. XIV. Although the language of the clause may be "cryptic and abstract[,] . . . there can be no doubt that at a minimum [it] require[s] that deprivation of life, liberty, or property by

adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). If the plaintiff los[t] something that fits into one of the three protected categories [of] life, liberty, or property," *Mallette v. Arlington County Employees' Supp. Net. Sys. II*, 91 F.3d 630, 634 (4th Cir. 1996), then the question that must be answered is whether the plaintiff "receive[d] the minimum measure of procedural protection warranted under the circumstances." *Id.*

In the present case, it was the state court defendants [Eversons] who were deprived of their property by the state court denying them their fundamental rights under the Fourteenth Amendment to the U.S. Constitution by conducting a trial in the absence of jurisdiction thereby denying them any measure minimum or otherwise of procedural protection warranted under the circumstances. *Mallette v. Arlington County Employees' Supp. Net. Sys. II*, supra.

The Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicating procedures, when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed [rights]." *Boddie*, supra.

The Eversons were denied well established adjudicating procedures as all the evidence in the case at bar proves unequivocally.

The Court should grant the petition for certiorari because the Eversons were denied a fair trial in a tribunal which lacked jurisdiction to determine the matter resulting in the loss of a fundamental right being that of the right of real property ownership, and as such, constitutes a deprivation of substantive and procedural due process at its very core.

CONCLUSION

For the reasons stated, the Court should grant this petition.

Respectfully submitted,

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1846

DAVID K. EVERSON;
PATRICIA M. EVERSON,

Plaintiffs-Appellants,

versus

RICHARD L. DOUGHTON, Individually and in His Official Capacity as Justice of the Superior Court of Alleghany/Rockingham County, North Carolina,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:06-cv-01033-JAB).

Submitted: January 9, 2008
Decided: January 23, 2008

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David K. Everson, Patricia M. Everson, Appellants Pro Se. Grady L. Balentine, OFFICE OF THE ATTORNEY GENERAL, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David K. and Patricia M. Everson appeal the district court's orders granting Richard L. Doughton's motion to dismiss the Eversons' 42 U.S.C. §§ 1981 and 1983 (2000) complaint. The district court found the Eversons' claims were barred by absolute judicial immunity and the Eleventh Amendment. The Eversons challenge both of the district court's findings. We have reviewed the record, the parties' informal briefs, and the district court's orders and find no reversible error. Accordingly, we affirm.

Judges enjoy absolute judicial immunity from damages liability for judicial acts unless done "in clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). In making this determination, "the scope of the judge's jurisdiction must be construed broadly." *Id.* at 456. And a judge may "not be deprived of immunity because the action [taken] was in error, was done maliciously, or was in excess of his authority." *Id.*; *see also Chu v. Griffith*, 771

F.2d 79 (4th Cir. 1985). We have identified two important factors for consideration: whether the function is one normally performed by a judge and whether the parties dealt with the judge in his or her judicial capacity. *King v. Myers,* 973 F.2d 354, 357 (4th Cir.1992).

The Eversons' only assertion is that Doughton wrongly decided the state court action. As a judge on the state superior court, Doughton had authority to consider that action and he is immune from suits arising from those acts.

The Eleventh Amendment provides, in pertinent part, that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted by one of the United States by Citizens of another State." The Eversons correctly note that the Eleventh Amendment does not bar suits seeking damages from government officials in their individual capacities. *See S.C. State Ports Auth. v. Fed. Mar. Comm'n,* 243 F.3d 165, 170 (4th Cir. 2001). However, this principle does not aid the Eversons because the only conduct the Eversons challenge is Doughton's disposition of state court proceedings. Therefore, the district court properly dismissed the action as being barred by the Eleventh Amendment. *See Will v. Michigan Dep't of State Police,* 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office" and therefore "is no different from a

suit against the State itself."). Accordingly, the Eleventh Amendment also bars the Eversons' claims.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID K. EVERSON and PATRICIA M. EVERSON, Plaintiffs,	)	
v.	)	1:06CV01033
RICHARD L. DOUGHTON, Individually and in His Official Capacity as Justice of the Superior Court of Alleghany/Rockingham County, North Carolina, Defendant.	)	

ORDER

This matter is currently before the Court on a Motion to Dismiss [Document #7] by Defendant Richard L. Doughton ("Defendant"). On April 18, 2007, the United States Magistrate Judge's Order and Recommendation [Document #12] was filed and notice was served on the parties pursuant to 28 U.S.C. § 636(b). Plaintiffs filed timely Objections [Documents [sic] #14]. The Court has now reviewed the Objections and the portions of the Recommendation to which objection was made, and has made a *de novo* determination that is in accord with the United States Magistrate judge's ruling. The Magistrate Judge's Recommended Decision is therefore affirmed and adopted.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss [Document #7] is GRANTED, and this case will be DISMISSED.

This, the 8th day of June, 2007.

/s/ James A. Beaty
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID K. EVERSON and PATRICIA M. EVERSON, Plaintiffs,	)	
v.	)	1:06CV01033
RICHARD L. DOUGHTON, Individually and in His Official Capacity as Justice of the Superior Court of Alleghany/Rockingham County, North Carolina, Defendant.	)	

JUDGMENT

BEATY, Chief Judge.

For the reasons set forth in the Order filed contemporaneously herewith, IT IS ORDERED AND ADJUDGED that Defendant's Motion to Dismiss [Document #7] is GRANTED and this case is hereby DISMISSED.

This, the 8th day of June, 2007.

/s/ James A. Beaty
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID K. EVERSON and PATRICIA M. EVERSON,	)	
Plaintiffs,	)	
v.	)	**1:06CV1033**
RICHARD L. DOUGHTON, individually and in his official capacity as Justice of the Superior Court of Alleghany/Rockingham County, N.C.,	)	(Filed Apr. 18, 2007
Defendant.	)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiffs David K. Everson and Patricia M. Everson brought this civil action pursuant to 42 U.S.C. §§ 1981 and 1983, alleging that Defendant Superior Court Judge Richard L. Doughton deprived them of their constitutional rights under the Fifth and Fourteenth Amendments during and in relation to a civil action brought in state court against the Eversons for breach of contract. Plaintiffs proceed *pro se*. In their Amended Complaint (Pleading No. 6), Plaintiffs assert claims against Judge Doughton individually and in his official capacity as a Superior

Court Judge of the State of North Carolina. In response to the Amended Complaint, Defendant Doughton has filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Pleading No. 7.) Plaintiffs have filed a response in opposition to the motion to dismiss.

In the Amended Complaint, Plaintiffs assert that they were sued in state court in 2003 by Charles S. Honacher and Catherine M. Honacher. One of the claims asserted by the Honachers was breach of contract, arising out a real estate transaction. Plaintiffs assert that the state court, and therefore Judge Doughton, lacked jurisdiction and judicial authority over the proceeding because the Honachers failed to join a necessary party to the litigation (the Stanleys) and because "the last act of making the Everson/ Stanley contract binding by law was the Stanley Heirs signing of the contract on May 5, 2003, in a State other than North Carolina." (Pleading No. 6, Am. Compl. ¶¶ 24, 25.) Plaintiffs further allege that, at the conclusion of the trial of the action, Judge Doughton, in violation of due process and equal protection and the laws of North Carolina, ordered specific performance, "forcing the Plaintiffs to convey their rightful land erroneously. . . ." (*Id.* ¶ 27.) Plaintiffs allege that Judge Doughton denied their motion for a new trial and their amended motion, and entered his final order on December 6, 2004.

Plaintiffs add allegations that Judge Doughton lacked jurisdiction to adjudicate matters relating to the rights of Carolina Farm Credit, ACA ("CFC"), a

mortgage holder with regard to the property in dispute. Plaintiffs allege that Judge Doughton acted without jurisdiction and judicial authority because Plaintiffs and CFC had chosen the State of Texas "as the footing for all negotiations regarding the purported Deed of Trust." (*Id.* ¶ 63.) Plaintiffs allege that they were denied trial by jury. They allege that the plaintiffs in the state action, the Honachers, committed a fraud upon the court by giving perjured testimony, and that Judge Doughton "defiled the court itself by allowing a sham of a trial to take place when it was glaringly obvious by admitted testimony, evidence, and Rule of Law no contract existed for the land pursuant to N.C.G.S. § 22-2." (*Id.* ¶ 109.) For relief, Plaintiffs ask that Judge Doughton's orders and judgments be nullified and that the Court grant declaratory relief and compensatory damages.

A summary of the allegations of the Amended Complaint, as set forth above, reveals on its face the obvious reasons why Defendant's Rule 12(b)(6) motion to dismiss this action should be granted. Defendant Judge Doughton is clearly entitled to judicial immunity with regard to damages claims against him in his individual capacity. It is well settled that judges are immune from damages liability for judicial acts unless done in the clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). Immunity is not lost because the judge's actions were taken in error, done maliciously, or exceeded authority. *Id.* at 355-56. The test for "judicial acts" focuses upon whether the acts were a

function normally performed by a judge. *Forrester v. White,* 484 U.S. 219 (1988). The kinds of arguments made here by Plaintiffs, that Judge Doughton erred in jurisdictional rulings, failed to join a necessary party, improperly found that proceedings should take place in North Carolina rather than Texas, and misapplied North Carolina law are utterly remote from the "clear absence of all jurisdiction" required for a forfeiture of judicial immunity. To the extent Plaintiffs ask for declaratory judgment, they essentially ask this Court to sit as a court of error with respect to a state court civil trial. This notion reveals a fundamental misunderstanding of the relationship between the federal and state courts.

Plaintiffs' action against Judge Doughton in his official capacity fares no better. Such an action is in essence an action against the State of North Carolina. However, the Eleventh Amendment generally bars suits directly against states or it agencies, regardless of the nature of relief sought. *Seminole Tribe of Florida v. Florida,* 517 U.S. 44, 58 (1996). A state may waive such immunity, but there is no allegation of waiver here, and it is readily apparent that there has been no such waiver by the State of North Carolina with regard to the rulings of its state court judges.

In sum, the Court finds that Defendant's Rule 12(b)(6) motion is well-taken and that the *pro se* Plaintiffs have stated no legally cognizable claim against the Defendant.

Conclusion

For reasons set forth above, **IT IS RECOMMENDED** that Defendant's motion to dismiss (Pleading No. 7) be granted and that this action be dismissed with prejudice.

/s/ P. Trevor Sharp
United States
Magistrate Judge

Date: April 18, 2007

APPENDIX E

FILED: February 26, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1846
(1:06-cv-01033-JAB)

DAVID K. EVERSON; PATRICIA M. EVERSON,

Plaintiffs-Appellants

v.

RICHARD L. DOUGHTON, Individually and in His Official Capacity as Justice of the Superior Court of Alleghany/Rockingham County, North Carolina,

Defendant-Appellee

ORDER

The petition for rehearing en banc was circulated to the full Court. No poll was requested. The Court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX F

MAIL TO: John T. Weigel
PO Box 2993
Greens Boro, NC 27402

This Deed drawn by
John T. Weigel, Jr. Attorney At Law

==========

Permanent Address of Grantee:
PO BOX 56, STANLEYTOWN, VA

==========

This Deed, made this 20th day of December, 1989, by and between Helen C. Stanley, Trustee under the Trust Agreement of Thomas B. Stanley and Ann B. Stanley, hereinafter called Grantor, and John David Stanley, Jr., Elizabeth Anne Stanley Hannula and Allen Bonson Stanley, as Tenants in Common, hereinafter called Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars, other good valuable consideration to him in hand paid by the Grantee, the receipt and sufficiency whereof is hereby acknowledged, has given granted, bargained, sold and conveyed, and by these presents does give, grant, bargain, sell, convey and confirm unto the Grantee his heirs and/or successors and assigns, premises in Madison Township, Rockingham County, North Carolina, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

This conveyance is subject to easements, restrictions, and rights-of-way of record and current year Ad Valorum taxes.

TO HAVE AND TO HOLD the above described premises, with all the appurtenances thereunto belonging, or in any way appertaining, unto the Grantee, his heirs and/or successors and assigns forever.

And the Grantor covenants that he is seized of said premises in fee, and has the right to convey the same in fee simple; that said premises are free from encumbrances (with the exceptions above stated, if any); and that he will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

When reference is made to the Grantor or Grantee, the singular shall include the plural and the masculine shall include the feminine or the neuter.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year above written.

/s/ Helen C. Stanley (Seal)
Helen C. Stanley, Trustee

==========

STATE OF Virginia)
COUNTY OF Henry)

I, J. Greg Haley, a Notary Public for said County and State, do hereby certify that Helen C.

Stanley, Trustee personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 20th day of December, 1989.

[SEAL]

/s/ J. Greg Haley
NOTARY PUBLIC
My Commission Expires:
December 13, 1991

APPENDIX G

FILED
ROCKINGHAM COUNTY NC
REBECCA B. CIPRIANI
REGISTER OF DEEDS

7-10-2003	2:49:58
RECORDING	21.00
PROBATE	2.00
EXCISE TAX	470.00
NONSTAND	

RECEIPT NO. 14077-001
BOOK 1158 PAGE 2049

NORTH CAROLINA
GENERAL WARRANTY DEED

Excise Tax: $ 470.00
Tax Map No. Parcel Identifier No.
This instrument prepared by:
John M. Thomas, Attorney at Law, George B. Daniel, P.A., P.O. Box 999, Yanceyville, North Carolina 27379 (without title examination)
Return after recording to the Grantee at:
5871 AC Washburn Rd
Madison, NC 27025

NORTH CAROLINA
ROCKINGHAM COUNTY

T

HIS DEED, made and entered into this 14th day of May, 2003, by and between, JOHN DAVID STANLEY, JR., and wife, JANET N. STANLEY; ELIZABETH STANLEY SCEARCE (f/k/a ELIZABETH ANNE STANLEY HANNULA) and husband, EARL

SCEARCE, and ALLAN B. STANLEY (a/k/a Allen Bonson Stanley) and wife, CONNIE J. STANLEY, hereinafter referred to as Grantor, and DAVID K. EVERSON and wife, PATRICIA M. EVERSON, hereinafter referred to as Grantee. The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

That the Grantor, in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has, and by there presents, does grant, bargain, sell, and convey unto the Grantee, in fee simple, all of his interest in that certain tract or parcel of land lying and being in Madison Township, Rockingham County, North Carolina, more particularly described as follows:

> BEGINNING at an existing concrete monument in the north right of way line of N.C. State Road 2326 (paved), W. Raymond Sharp heirs (Deed Book 206, Page 381) and running thence with said Sharp heirs line, North 01 deg. 18 min. 40 sec. West 2095.89 feet to an iron. Sharp heirs corner in the South line of Dr. Robert T. Harned (Deed Book 668, Page 341); thence with Harned's line South 84 deg. 28 min. East 136.03 feet to a concrete monument, the southwest corner of Sitting Rock Farm, Inc. (Deed Book 668, Page 759, see also Lot No 1., Map of W. Earl Thomas in

Map Book 9, at Page 60); thence with Sitting Rock Farm, Inc. line, South 84 deg. 30 min. East passing through an iron in line at 1279.93 feet, a total distance of 1297.27 feet to a point in the centerline of State Road No. 2321 (Gravel); thence with the centerline of that road, South 03 deg. 33 min. West 1242.88 feet to a point; thence continuing with the centerline of that road, South 00 deg. 08 min. West 101.57 feet; thence still with the centerline of the road and on its paved portion South 03 deg. 56 min. East 123.82 feet; thence still with the centerline of the paved portion of State Road No. 2321 South 13 deg. 19 min. East 93.04 feet to the point of intersection of the centerline of that road with the centerline of State Road No. 2326; thence with the centerline of State Road No. 2326; thence with the courses and distances; South 59 deg. 59 min. West 194.19 feet, South 66 deg. 12 min. West 307.81 feet, and South 76 deg. 33 min. West 905.63 feet to a point; thence leaving the centerline of the road, North 01 deg. 18 min. 40 sec. West 30.69 feet to the point of BEGINNING, and *containing 58.712 acres, more or less.* The foregoing description was prepared from a map of survey by Kenneth A. Vaughn, R.L.S., dated May 12, 1978, entitled "Property of John G. Sharp". For further reference and chain of title see Deed Book 206, at page 380, Deed Book 249, at page 41. This being the same property shown as Tract 1 as conveyed by Warranty Deed dated December 20, 1989, recorded in Book 830, on Page 1294,

Rockingham County Registry, the description therein being incorporated herein by reference.

TITLE NOT EXAMINED
BY PREPARER OF DEED

TO HAVE AND TO HOLD the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging to the Grantee in fee simple.

And the Gantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear from all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

1. The 2003 Rockingham County property taxes which because a lien on the land January 1, 2003, but are not due and payable until September 1, 2003.

2. Any and all valid recorded and unrecorded easements and rights of way over and across subject property, including those for public utilities and highways.

3. Any inaccuracies and discrepancies which an up to date survey might reveal.

4. Any environmental defects of property which might be revealed by on-site investigation.

5. Restrictions of record, if any.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

/s/ John David Stanley, Jr. (SEAL)
John David Stanley, Jr.

/s/ Janet N. Stanley (SEAL)
Janet N. Stanley

/s/ Elizabeth Stanley Scearce (SEAL)
Elizabeth Stanley Scearce
(f/k/a Elizabeth Anne Stanley Hannula)

/s/ Earl Scearce (SEAL)
Earl Scearce

/s/ Connie J. Stanley (SEAL)
Connie J. Stanley

/s/ Allen B. Stanley (SEAL)
Allan B. Stanley
(a/k/a Allen Bonson Stanley)

STATE OF NEVADA, COUNTY OF Washoe

I, a Notary Public of the State and County aforesaid, certify that John David Stanley, Jr., and wife, Janet N. Stanley, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21st day of May, 2003.

My commission expires: 11-19-06

/s/ Jennifer Hublar Notary Public

JENNIFER HUBLAR
[SEAL] Notary Public – State of Nevada
Appointment Recorded in Washoe County
No: 02-79253-3 – Expires November 19, 2006

STATE OF NEVADA, COUNTY OF Washoe

I, a Notary Public of the State and County aforesaid, certify that Elizabeth Stanley Scearce (f/k/a Elizabeth Anne Stanley Hannula), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 27th day of May, 2003.

My commission expires: Aug. 7, 2006

/s/ C.B. Paguio Notary Public

C.B. PAGUIO
[SEAL] Notary Public – State of Nevada
Appointment Recorded in Washoe County
No: 02-78070-2 – Expires August 7, 2006

STATE OF Delaware, COUNTY OF Kent

I, a Notary Public of the State and County aforesaid, certify that Allan B. Stanley (a/k/a Allen Bonson Stanley) and wife, Connie J. Stanley, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3 day of June, 2003.

My commission expires: 8/3/04

/s/ Dorothy M. Litano Notary Public

[STAMP]

STATE OF Virginia, COUNTY OF Henry

I, a Notary Public of the State and County aforesaid, certify that Earl Scearce, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 2 day of June, 2003.

My commission expires:
My Commission Expires October 31, 2007

/s/ Rolanda R. Stockton Notary Public

[SEAL] NORTH CAROLINA-ROCKINGHAM COUNTY
The certificate(s) of Jennifer Hublar, C.B. Paguio, Dorothy M. Litano
& Rolanda R. Stockton
a Notary (Notaries) Public is (are) certified to be correct. This instrument and this certificate are daily registered at the date and time shown herein.
REBECCA B. CIPRIANI,
REGISTER OF DEEDS
BY /s/ Amy L. Simpson
Assistant/Deputy Register of Deeds

The foregoing certificate of [Illegible]
is certified to be co[Illegible] re duly registered at the date and time and in the Book and Page shown on the first page hereof.